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Assessing the MacCrate Skills: Developing a Good Survey

by Sam Sue*

Introduction

This article is about the use and construction of surveys to assess how law school graduates perceive the importance of specific legal skills in their workplace and to measure perceptions of their level of preparedness in various legal skills with respect to the work they do. Surveys and the development of better survey instruments are very important as an increasing number of law schools use these kinds of surveys to assess their educational programs and curricula and formulate curricular changes. This article offers suggestions on how surveys of this type can be improved so that law schools and other decision makers can feel more confident about the accuracy and dependability of the survey results. This article also hopes to solve a practical problem that is confronted when constructing a good survey. Most law schools lack the expertise to develop from scratch a survey that would produce dependable and meaningful results. This article seeks to address this problem by laying the groundwork for the development of a legal skills assessment survey that law schools and bar associations can use.

The author's interest in this topic came as a result of being the project leader and staff member for planning and carrying out a graduate and employer survey on behalf of the CUNY Law School. In the fall of 2000, he was asked to develop and administer a survey of the type described above. With no in-house institutional researcher on board, the author went about identi-

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fying and gathering surveys that other law schools had constructed.¹ Only a handful of schools responded. Questionnaire forms were obtained from the University of Wisconsin and University of Arkansas School of Law. With the pro bono assistance of a staff member from a marketing firm, the survey form and questionnaire were modified and a survey was administered to the CUNY Law graduates of the classes of 1997, 1998, and 1999 and their employers during the summer of 2001. In the fall of 2001, results were generated and were presented to the CUNY Law faculty. Subsequently, this author took the step of reassessing this survey by reviewing the literature on previous legal skills surveys and examining methodological issues in reconstructing the survey.

Part I of this article will give a brief background on the MacCrate skills, explain why law schools resort to surveys to assess the legal abilities of graduates in the workplace, and how these surveys can help law schools to assess their curriculum. Part II of this paper will describe the ways in which two legal skills surveys—namely, the CUNY Law School and the William Mitchell College of Law surveys—analyzed their data to identify skills areas that needed further curricular attention. Part III of this article will outline several methodological issues that must be resolved in designing a uniform survey that law schools across the country can use in assessing graduate perceptions of the importance of and preparedness for the MacCrate skills.

Part I: Using the MacCrate Skills as a Benchmark

In 1989, the American Bar Association formed the Task Force on Law Schools and the Profession for the purpose of examining and improving the educational process by which students are trained to enter the legal profession. In 1992, the Task Force issued its reports. Part II of the MacCrate Report identified and described ten skills with which every lawyer

1. The author wishes to express his appreciation to Global Management Assistance Group for their advice in constructing the survey and to several individuals at CUNY Law School—namely, Kristin Booth Glen, Dean and Professor, for giving the author the opportunity to do the pilot survey research; Mary Lu Bilek, Associate Dean of Academic Affairs, CUNY Law School, for her thoughtful comments on the survey; and Patricia Tynan for her invaluable assistance in the administration of the survey and data input.

should have familiarity in undertaking legal work: (1) problem solving; (2) legal analysis and reasoning; (3) legal research; (4) factual investigation; (5) communication; (6) counseling; (7) negotiation; (8) litigation and alternative dispute-resolution procedures; (9) organization and management of legal work; and (10) recognizing and resolving ethical dilemmas.²

The MacCrate Report specifically disavows the notion that the Statement of Skills and Values is “a standard for a law school curriculum.”³ Nevertheless, the Statement helped to accelerate the incorporation of training of lawyering and clinical skills into the curricula of law schools across the country.⁴ As further evidence of the incorporation of the MacCrate skills into law school curricular norms, one can point to the American Bar Association accreditation standards. Standard 302(a)(1) provides: “All students in a J.D. program shall receive: (1) instruction in the substantive law, values and skills (including legal analysis and reasoning, legal research, problem solving and oral and written communication) generally regarded as necessary to effective and responsible participation in the legal profession.”⁵

Interpretation 302-1 elaborates the above provision in stating:

Instruction in professional skills need not be limited to any specific skill or list of skills. Each law school is encouraged to be creative in developing programs of instruction in professional skills related to the various responsibilities which lawyers are called upon to meet, using the strengths and resources available to the school. Trial and appellate advocacy, alternative methods of dispute resolution, counseling, interviewing, negotiating, problem solving, factual investigation, organization and management of le-

2. A.B.A., *LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP* 138-40 (1992) [hereinafter *MacCrate Report*]. The foregoing citation is to the full report, with all its commentaries. For a summary of the report, more commonly used by students and practitioners, see A.B.A., *LEGAL EDUCATION AND ADMISSION TO THE BAR, STATEMENT OF FUNDAMENTAL LAWYERING SKILLS AND PROFESSIONAL VALUES* (1992).

3. *MacCrate Report*, *supra* note 2, at 116.

4. Gary A. Munneke, *Legal Skills for a Transforming Profession*, 22 *PACE L. REV.* 105, 130 (2001).

5. ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS 302(a)(1) (2001) [hereinafter ABA STANDARDS].

gal work, and drafting are among the areas of instruction in professional skills that fulfill Standard 302(c)(1).⁶

Given its impact on the law school curriculum, the MacCrate Statement has in effect served as a set of learning objectives for the skills that law students should achieve upon graduation, despite the fact that the Statement's description of skills provides little guidance on the actual level of skill needed to produce competent entry-level attorneys.⁷ Other professional schools have taken a more explicit approach to defining learning objectives. For instance, in 1998, the Association of American Medical Colleges set forth not only a list of core skills and knowledge areas that doctors should possess, but also specific learning objectives that medical schools are required to ensure for their graduates.⁸

With the incorporation of MacCrate skills training into the law school curricula, a question arises as to evaluating law school performance in teaching the MacCrate skills to its gradu-

6. See *id.* As additional evidence, the ABA requires site evaluation teams to include a section in their report on the law school's curriculum with respect to legal writing, analysis and problem solving as well as professional skills training. OFFICE OF THE CONSULTANT ON LEGAL EDUCATION, ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, MEMORANDUM ON THE SUGGESTED FORMAT FOR THE REPORT OF AN ABA SITE VISIT TEAM 8 (2002-03), available at www.abanet.org/legaled/.

7. As one commentator notes, the MacCrate Report sets forth the expectation that the acquisition of lawyering skills occurs throughout the professional lives of attorneys. Munneke, *supra* note 4, at 131. A law school education is an important step in the learning process, but lawyers are also expected to hone their skills by working with more experienced attorneys and through continuing legal education courses. *Id.* In other words, lawyers should be constantly evolving with respect to building their lawyering skills. The Statement is consistent with educational theories of domain learning, which describe the movement from novice to higher forms of competence leading to expert status. See, e.g., Patricia A. Alexander, *Mapping the Multidimensional Nature of Domain Learning: The Interplay of Cognitive, Motivational, and Strategic Forces*, in ADVANCES IN MOTIVATION AND ACHIEVEMENT 213-50 (L. Maehr & P.R. Pintrich eds., 1997).

8. With the publication of the Rappeleye Commission Report in 1932, the Association of American Medical Colleges (AAMC) has periodically reissued a set of objectives in response to changes in the medical profession. As recently as 1998, AAMC's Medical School Objectives Project was initiated "to develop a consensus within the medical education community on the attributes that medical students should possess at the time of graduation, and to set forth learning objectives for the medical school curriculum derived from those attributes." AAMC: Report I Learning Objectives for Medical Student Education Guidelines for Medical Schools 1, available at <http://www.aamc.org/meded/msop/msop1.pdf> (Jan. 1998).

ates. The obvious key questions regarding the MacCrate skills boil down to the following:

- What is the level of preparedness of law graduates for the legal skills and competencies they used in their workplaces?
- To what extent are the MacCrate skills still relevant to the tasks that law graduates perform in today's workplace?⁹

Assessment can help law schools to identify (1) their strengths and weaknesses in preparing law students for the workplace; (2) areas of curricular changes and prescribed teaching interventions; and (3) the relative importance and relevance of skills that law graduates acquire in their workplaces. Assessment data is the starting place for an informed dialogue in a law school community.¹⁰ Proposals for curricular changes and prescribed teaching methods can be controversial, since some faculty members may construe such proposals as an infringement on their academic freedom.¹¹

What sorts of assessments are available to determine the level of legal skills that a law student has? Ordinarily, the best assessment would be direct measures of legal skills such as evaluations by experts; paper and pencil tests; portfolio assessments; performance assessments; or some combination of the above. However, there is no known standardized measure to assess how well graduates perform on a battery of MacCrate skills. Law graduate performance on the bar examination is simply irrelevant to this measure, since the bar examination has demonstrated only the value of predicting the level of legal abilities that may be exhibited by an admitted examinee in the workplace.¹² The MacCrate Report stated:

9. Some commentators have urged that the MacCrate skills be updated in the face of changes in the legal workplace. See, e.g., Munneke, *supra* note 4.

10. See generally Anne E. Bilder & Clifton F. Conrad, *Challenges in Assessing Outcomes in Graduate and Professional Education*, in ASSESSING GRADUATE AND PROFESSIONAL EDUCATION: CURRENT REALITIES, FUTURE PROSPECTS, 92 NEW DIRECTIONS FOR INSTITUTIONAL RESEARCH (1996). At the time of publication, Anne E. Bilder was an attorney and pursuing a doctoral degree in educational administration at the University of Wisconsin at Madison; Clifton Conrad was a Professor of Higher Education at the University of Wisconsin at Madison.

11. See *id.*

12. A New York State Bar Association and Association of the Bar of the City of New York joint committee report recently declared:

[W]e do not believe that obtaining a passing grade on the current bar examination by itself indicates minimal competence to practice law. While legal

The traditional bar examination does nothing to encourage law schools to teach and law students to acquire many of the fundamental lawyering skills identified in the Statement of Skills and Values. If anything, the bar examination discourages the teaching and acquisition of many of those skills, such as problem solving, factual investigation, counseling and negotiation, which the traditional examination questions do not attempt to measure. For example, the examination influences law schools, in developing their curricula, to overemphasize courses in the substantive areas covered by the examination at the expense of courses in the area of lawyering skills.¹³

As there is no direct way to measure the lawyering skills of law graduates, law schools are forced to rely on indirect data to determine how prepared their graduates are for the workplace. At least since the 1950s, law schools have used surveys of law graduate perceptions as a way to assess whether they have been doing a good job in training their graduates.¹⁴ Surveys of students, alumni and faculty can provide law schools with an understanding of how well the law school provides a positive learning environment. Surveys can serve as an important tool that law schools can use to assess how well they are training their graduates with respect to the MacCrate skills by measuring graduate attitudes regarding their preparation. Moreover, surveying graduates and employers can also help law schools determine the relevancy of skills to the workplace and can serve to identify other skills that should be added or removed.

As a general matter, surveys are routinely used in social science research as well as curricular evaluation in other higher education settings. Medical schools use surveys and other sophisticated research methods to assess their curriculum and

reasoning and analysis are critical to competent lawyering, and, therefore, a necessary component of minimal competence they also are not sufficient for a new lawyer to practice law.

The Committee on Legal Education and Admission to the Bar of the Association of the Bar of the City of New York and The Committee on Legal Education and Admission to the Bar of the New York State Bar Association, *Public Service Alternative Bar Examination* (June 14, 2002); see also Kristin Booth Glen, *When and Where We Enter: Rethinking Admission to the Legal Profession*, 102 COLUM. L. REV. 1696 (2002).

13. MacCrate Report, *supra* note 2, at 278.

14. Leonard L. Baird, *A Survey of the Relevance of Legal Training to Law School Graduates*, 29 J. LEGAL EDUC. 264 (1978).

curricular innovations.¹⁵ Surveys give us valuable information on the incidence and distribution of sociological and psychological variables, and they can also give us a glimpse of the motivations, attitudes and opinions of a given population.¹⁶ In the context of legal education, surveys have been used for a variety of purposes ranging from gauging employment status of graduates to measuring student attitudes towards teaching skills of professors. The more sophisticated of these surveys examined the effects of affirmative action based on the performance of University of Michigan Law School minority graduates,¹⁷ while another survey documented Latino law students' perceptions of greater discrimination and unfairness in the job selection process.¹⁸

The next section of this article will first summarize the history of the use of legal skills surveys and then turn to a description of two recently administered skills surveys—one pilot survey from CUNY Law School and another from William Mitchell College of Law.

Part II: Using Surveys to Measure Law Graduate and Employer Attitudes Towards Legal Skills Taught by Law Schools

A. *Past Surveys to Measure Law Graduate and Employer Attitudes Toward Legal Skills*

Since the 1950s, law schools and bar associations, as well as independent researchers, have used surveys to measure opinions and the occupational and workplace characteristics of

15. See, e.g., Antoinette S. Peters et al., *Long-term Outcomes of the New Pathway Program at Harvard Medical School: A Randomized Control Trial*, 75 ACAD. MED. 470 (2000) (Report on a survey on twenty-two measures to assess the effects of a new curricular program); Leonard J. Finocchio, *Professional Competencies in the Changing Health Care System: Physicians' Views on the Importance and Adequacy of Formal Training in Medical School*, 70 ACAD. MED. 1023 (1995).

16. FRED N. KERLINGER & HOWARD B. LEE, FOUNDATIONS OF BEHAVIORAL RESEARCH 599-620 (4th ed. 2000).

17. See Richard O. Lempert et al., *Michigan's Minority Graduates in Practice: The River Runs Through Law School*, 25 LAW & SOC. INQUIRY 395 (2000).

18. See Sharon Foley & Deborah L. Kidder, *Hispanic Law Students' Perceptions of Discrimination, Justice and Career Prospects*, 24 HISP. J. OF BEHAV. SCI. 23 (2002).

law graduates.¹⁹ Almost all of these surveys in some form asked law graduates their:

- perceptions of the importance of various legal skills and competencies in the workplace;
- opinions on the level of preparation they had for the tasks required in their respective workplaces; and
- opinions on whether their legal education accounted for their level of preparation

Results from the surveys, though differing in style and format, all indicated that law graduates saw a need for more training in the practical legal skills such as counseling and interviewing clients, trial preparation, and legal writing. Taking a cue from these surveys at various schools, Leonard Baird,²⁰ a social scientist, undertook a national survey to:

- identify the kinds of positions legally trained persons worked in;
- identify the skills and abilities that were deemed most useful to practicing lawyers; and
- the attorney-participants' perceptions of the role of law schools in developing these skills

Baird used a purposive sample²¹ of law school graduates of 1955, 1965, and 1970 that were drawn from six law schools deemed typical based on selectivity, curriculum and location.²² In Baird's survey, a self-administered questionnaire was sent to 4,000 graduates whose addresses were known to the participating law schools. Baird's survey found that graduates believed

19. The law schools include Stanford, University of Wisconsin, and University of Michigan. *See generally* Baird, *supra* note 14. One independent researcher surveyed the classes from the law schools of Boston College, Connecticut, Iowa, Pennsylvania, University of Southern California and Yale. *See generally* Robert Stevens, *Law Schools and Law Students*, 59 VA. L. REV. 551 (1973). Another independent researcher surveyed University of Toledo law graduates while another surveyed members of the Kentucky bar. Baird, *supra* note 14, at 265 (citing Stern, *Retrospection: What Recent Law Graduates Think of Their Education*, 17 STUDENT LAW. J. 27 (1972)).

20. Dr. Baird, at the time, was a researcher at the Law School Admissions Council, which also funded his survey research.

21. A purposive sample involves a "deliberate effort to obtain representative samples by including presumably typical areas or groups in the sample." KERLINGER & LEE, *supra* note 16, at 179.

22. The law schools were Boston College, George Washington, Michigan, New York University, San Francisco, and Texas. Baird, *supra* note 14, at 267.

that general skills such as counseling, writing abilities, negotiation skills, and communication skills were more important to their work than knowledge of specific legal areas.²³

Baird found the above opinions to be striking, since lawyering skills were on the periphery of law school curriculum. At the time, law schools centered their curricula around conveying knowledge of legal areas as a way to train students to think like lawyers.²⁴ Baird's study and the two surveys²⁵ that preceded it gave support to those seeking the MacCrate Task Force's reassessment of the role of law schools set forth in its report.²⁶

B. *The William Mitchell College of Law and CUNY School of Law Surveys*

Since Baird's study, law schools and regional bar associations have administered surveys to recent law graduates and practicing attorneys with respect to the relevance and preparedness for an array of legal skills. These surveys include very recent skills assessment surveys administered by the CUNY School of Law in 2000 and another administered by the William Mitchell College of Law (WMCL) in Minnesota.²⁷

Both surveys were mailed to practicing attorneys who had graduated from their respective schools; the sample selection of the WMCL survey, however, was broader as it included practicing attorneys regardless of whether or not they attended the Law School. In both cases, the sample from which the data was generated is called a convenience sample, meaning that the questionnaire responses came only from those individuals who voluntarily sent in responses.

The identification of the responses at least with respect to the graduates were coded, meaning that a questionnaire form could not be identified with a graduate's name except from a

23. The only exception to this was knowledge of statutory law. *Id.* at 292.

24. *See id.* at 292.

25. *See* John O. Mudd & John W. LaTrielle, *Professional Competence: A Study of New Lawyers*, 49 MONT. L. REV. 11 (1988).

26. *See generally* MacCrate Report, *supra* note 2.

27. *See* John Sonsteng & David Camarotto, *Minnesota Lawyers Evaluate Law Schools, Training and Job Satisfaction*, 26 WM. MITCHELL L. REV. 327 (2000). This article discusses only the MacCrate skills questions related to importance and preparedness in both the WMCSL and CUNY surveys. These surveys however contained other kinds of questions that are not central to this article.

coded sheet, whose access was restricted. Although the wording and format of the questionnaires differed, both surveys asked graduates to respond to a series of questions about an array of legal competencies based on the MacCrate Report. The following table is a comparative list of competencies and their wordings contained in the two surveys:

Table 1: Comparative List of MacCrate Skills Used in the Surveys Conducted by William Mitchell and CUNY Law Schools

William Mitchell	CUNY Law School
Ability to diagnose and plan solutions for legal problems	Problem solving for specific groups/clients
Ability in legal analysis and legal reasoning	Critical thinking and legal analysis
Drafting legal documents	Drafting legal documents
Knowledge of the substantive law	Knowledge of substantive law
Library legal research	Traditional research skills
Computer legal research	Computer research skills
Fact gathering	Fact investigation
Oral communication	Oral argument
Written communication	Analytical writing Persuasive writing
Counseling	Interviewing and counseling
Instilling others' confidence in you	
Negotiation	Negotiation
Knowledge of procedural law	Knowledge of procedural law
Understanding and conducting litigation	Pretrial practice/trial advocacy
Organization and management of legal work	Time management
Ability to obtain and keep clients	
Sensitivity to professional ethical concerns	Professional responsibility/ethics
	Clinical judgment

For each of these MacCrate skills, subjects were asked to rate the following:

- The importance of the above skills with respect to their responsibilities in a law office—e.g., on a 1-7 scale, 1 being not important, 7 being very highly important

- The level of preparedness subjects perceived with respect to each of the skills—e.g., on a 1-7 scale, 1 being not at all prepared and 7 being very well prepared

The WMCL survey went beyond the CUNY survey and asked subjects:

- Whether each of the above skills can be learned in law school
- To identify up to 3 sources where subjects acquired the legal skill from a closed list of sources²⁸

The following is the array of factors and rating scale presented in the CUNY Law School Survey:

28. The sources listed were: general law school curriculum, moot court/other competitions, law related work experience in summers or during academic year, your own experience, continuing legal education courses, training by another school, legal practice simulations in law school, law review experience, client contacts through law school clinics, observation of other attorneys, advice from other lawyers, observation of non-lawyers, advice from non-lawyers, and training by product or service vendors.

**Table 2: Importance/Preparedness For The MacCrate Skills
As It Appeared In The CUNY Law School Pilot Survey**

Below is a list of skills and abilities. Please rate these skills/abilities with respect to the two questions which appear in the boxes below.

	A. How important are the following skills or abilities in your career?					B. How well did CUNY School of Law prepare you in each of these skills areas?				
	Not at all Important					Very Important				
	1	2	3	4	5	Poor				Excellent
1. Traditional research skills	1	2	3	4	5	1	2	3	4	5
2. Computer research skills	1	2	3	4	5	1	2	3	4	5
3. Analytical writing	1	2	3	4	5	1	2	3	4	5
4. Persuasive writing	1	2	3	4	5	1	2	3	4	5
5. Knowledge of substantive law	1	2	3	4	5	1	2	3	4	5
6. Knowledge of procedural law	1	2	3	4	5	1	2	3	4	5
7. Administrative advocacy (i.e., Social Security, EEOC, etc.)	1	2	3	4	5	1	2	3	4	5
8. Interviewing and counseling skills	1	2	3	4	5	1	2	3	4	5
9. Professional ethics	1	2	3	4	5	1	2	3	4	5
10. Critical thinking and analysis	1	2	3	4	5	1	2	3	4	5
11. Fact investigation	1	2	3	4	5	1	2	3	4	5
12. Pre-trial practice and trial advocacy	1	2	3	4	5	1	2	3	4	5
13. Negotiation	1	2	3	4	5	1	2	3	4	5
14. Appellate advocacy	1	2	3	4	5	1	2	3	4	5
15. Drafting legal documents	1	2	3	4	5	1	2	3	4	5
16. Problem solving for specific clients/groups	1	2	3	4	5	1	2	3	4	5
17. Alternative dispute resolution	1	2	3	4	5	1	2	3	4	5
18. Office administration	1	2	3	4	5	1	2	3	4	5
19. Oral argument	1	2	3	4	5	1	2	3	4	5
20. Ability to learn unfamiliar areas of the law	1	2	3	4	5	1	2	3	4	5

From this set of questions that asked graduates to rate their perceptions of the importance of skills in their workplace and their level of preparedness for these skills, the following descriptive table of means was prepared:

Table 3: CUNY Law Alumni Mean Scores Rating Importance and Preparedness of Legal Skills in the Workplace, Classes of 1997, 1998, 1999

(Scale from 1-5), n=number of individuals responding, M=mean, and SD=standard deviation

Legal Skills	Importance			Preparedness		
	n	M	SD	n	M	SD
Critical thinking and legal analysis	81	4.46	.84	80	3.92	.91
Fact investigation	82	4.24	.98	81	3.47	1.07
Professional responsibility/ethics	80	4.21	.99	79	3.58	1.07
Knowledge of substantive law	81	4.20	.90	80	3.46	.94
Time management	82	4.15	1.07	80	2.75	1.33
Knowledge of procedural law	81	4.09	.98	80	3.46	1.05
Interviewing and counseling	82	4.09	1.10	81	3.80	1.04
Analytical writing	81	4.05	1.01	80	3.78	.95
Negotiation	82	3.99	1.13	79	3.06	1.27
Oral argument	82	3.94	1.26	80	3.70	.95
Persuasive writing	81	3.91	1.06	81	3.69	1.03
Clinical judgment	80	3.85	1.24	78	3.62	.98
Computer research skills	81	3.77	1.08	81	3.67	.88
Pretrial practice/trial advocacy	81	3.73	1.47	77	3.45	1.23
Ability to learn unfamiliar areas of law	79	3.72	1.17	79	3.42	1.07
Traditional research skills	81	3.66	1.14	81	3.68	.95
Problem solving for specific groups/clients	82	3.62	1.16	80	3.39	1.00
Office management	82	3.01	1.42	79	2.47	1.49
Theoretical perspectives	81	2.95	1.24	79	3.59	.98
Administrative advocacy	80	2.83	1.51	79	2.81	1.41
Alternate dispute resolution	82	2.72	1.41	77	2.51	1.45
Appellate advocacy	82	2.49	1.39	79	2.52	1.37
Drafting legal documents	82	2.49	1.39	81	3.48	.92

In general, the above data only gives researchers a broad view of which skills are important and how prepared graduates feel with respect to these skills. For instance, it is clear from Table 3 that "time management" is considered by recent graduates to be a very important skill for which these graduates felt relatively unprepared. However, mean rating scores only provide a partial picture of what skills deserve more curricular attention. The next sub-section will outline several ways and examples in which the data can be depicted and analyzed to help law schools assess their programs.

C. *Using Survey Data to Identify Skill Areas Deserving Curricular Attention*

1. *An Importance/Preparedness Matrix*

The importance and preparedness data can be matched to help law schools identify "important" skills that deserve greater curricular attention. Skills that qualify as 1) being important and 2) skills for which graduates feel relatively less prepared are skills that deserve greater attention from the law school administration and faculty. The William Mitchell researchers identified areas needing more law school attention by creating a matrix of skills rated by their dimensions of preparedness and importance as depicted in Table 4:

Table 4: William Mitchell College School of Law Data Focus Area Legal Skills Training

	Most Important	Least Important
Well prepared	<ul style="list-style-type: none"> • Ability in legal analysis and legal reasoning • Written communication • Sensitivity to professional and ethical concerns • Oral communication 	<ul style="list-style-type: none"> • Library legal research • Knowledge of substantive law
Not so well prepared	<ul style="list-style-type: none"> • Ability to diagnose and plan solutions for legal problems • Instilling others' confidence in you • Negotiation • Fact gathering • Drafting legal documents • Counseling • Ability to obtain and keep clients • Knowledge of procedural law • Organization and management of legal work 	<ul style="list-style-type: none"> • Understanding and conducting litigation • Computer legal research

The above table was created by transforming the importance and preparedness ratings into categories of "most important"/"least important" and "well prepared"/"not so well prepared."²⁹ Skills were deemed to be most important if 80% or more respon-

29. The matrix amounts to a statistical technique called "chi-square" in which expected frequencies for categories are compared with the actual frequencies for those same categories. Ratings on a continuous scale like the one being used here

dents rated a skill as important (a rating of 4 or above on a 7-point scale). Skills that were deemed to be ones in which respondents well prepared were those in which 50% or more of the respondents rated the skill as well prepared (a rating of 4 or above on a 7-point scale). Thus, the skills identified in the left hand bottom corner were important skills that were also perceived as being those for which the respondents felt less well prepared and deserve further attention from the law school for gaps in their educational programming. Based on the technique used for the WMCL survey, a matrix of the CUNY data was prepared as shown in Table 5, which appears below:

Table 5: CUNY Law School Data³⁰

	More Important	Less Important
Well prepared	<ul style="list-style-type: none"> • Analytical writing • Persuasive writing • Knowledge of procedural law • Interviewing and counseling skills • Professional responsibility and ethics • Critical thinking and legal analysis • Computer research skills • Drafting legal documents • Traditional legal research skills 	<ul style="list-style-type: none"> • Pretrial/trial skills • Clinical judgment • Theoretical perspectives
Less well prepared	<ul style="list-style-type: none"> • Knowledge of substantive law • Fact investigation • Negotiation • Time management • Problem solving • Ability to learn unfamiliar areas of law 	<ul style="list-style-type: none"> • Administrative advocacy • Appellate advocacy • Alternative dispute resolution • Office administration

(1-7) were converted to categorical variables by drawing a distinction between most important/less important and well prepared/not so well prepared.

30. For the CUNY Law matrix, skills that were considered important were those skills for which 80% or more respondents gave the skill a 3 or more on a rating scale of 5; less important skills were those that did not meet that criteria. Skills for which graduates considered themselves "well-prepared" were deemed to be those skills in which 50% or more respondents assigned a preparedness rating of 4 or more on a 5-point scale; skills for which graduates felt relatively less well-prepared were those skills that failed to meet the 50%, 4-5 rating criteria.

In Tables 4 and 5, the bottom, left hand box identifies “important” skills that CUNY/WMCL law graduates identified as being ones for which they felt relatively less well prepared. These skills could be considered “focus” skills that demand greater curricular attention from the law administration and faculty.³¹

2. *Differences in Mean Ratings of Importance and Preparedness on the Basis of Racial Ethnicity or Gender*

The mean ratings of importance and preparedness when coupled with racial/ethnicity and gender data can provide a law school with important data on how different groups may be experiencing their legal education. For instance, significant differences in preparedness ratings between minority students and white students would indicate a racial gap in experiences with the legal education. Similarly, the same could be shown between males and females. Table 6 contains hypothetical preparedness ratings-related data and is an example of data that could indicate a gap in perceptions between whites/non-whites and males/females.

Table 6: Hypothetical Data Of Preparedness Ratings For The Legal Writing Skill

	(Scale from 1-5) Whites	Non-Whites
Male	3.14	2.53
Female	3.94	2.88

Depending upon the respondent size and variability of scores, the significance of the differences between means based on race and gender could be determined by a statistical technique called ANOVA (analysis of variance).³² For instance, if a law school

31. Some commentators such as Gary Munneke have pointed out that recent graduate ratings of importance are to be viewed with skepticism given their relative inexperience in the legal profession. *See generally* Munneke, *supra* note 4. If recent graduate ratings of importance were discounted, a law school could also look to all the skills listed as being ones for which graduates perceived themselves as being relatively less prepared.

32. A one-way ANOVA would be performed to determine the significance of different levels of one factor—for example, gender (male v. female). *See* GENE A.

were to find statistically significant differences in mean preparedness scores between whites and non-whites, the law school should take further steps to examine a racial gap in how students experience the educational program. Further study by the school would be warranted.³³

The WMCL survey found that there was a gender gap among the WMCL graduates' perceptions of preparedness for only one skill—namely “fact gathering.” Among the non-WMCL population there was a significant difference in preparedness in the area of “knowledge of substantive law.”³⁴

3. *Matching Preparedness Ratings with Academic Data*

Matching preparedness ratings with academic data could assist a law school in assessing the effects of components of their academic programming with a graduate's perceptions of her training. For instance, the mean preparedness scores for oral argument skills should be higher for students who were enrolled in coursework, such as a Criminal Defense Clinic, that is designed to teach those skills. Obviously, low mean preparedness scores for oral argumentation despite participation in a trial-related clinic would mean either a lack of preparedness, a lack of self-efficacy in using those skills or both. Such data would demand that the law school administration and faculty pay more attention to understanding the reasons for the discrepancies based on race or ethnicity.

Finally, academic course data could be coupled with preparedness rating and gender data to ascertain whether there is a gender or ethnicity gap in graduates' evaluations of skills training. For instance, in the William Mitchell study, female WMCL graduates who were enrolled in the Legal Practicum course saw themselves as better prepared for 15 of the 17 legal skills listed than male WMCL graduates also enrolled in the Legal Practicum course. Similarly, data could be coupled

GLASS & KENNETH D. HOPKINS, *STATISTICAL METHODS IN EDUCATION AND PSYCHOLOGY* 377-79 (1996). A two or three factor ANOVA examines the significance between the levels of each factor as well as the interaction effects between various combinations of the factors. *See id.* at 482-85.

33. As a general matter, differences between two mean scores are considered statistically significant if the differences between the scores have a less than 5% chance of appearing randomly.

34. Sonsteng & Camarotto, *supra* note 27, at 370.

with racial/ethnicity data to determine whether minority students enrolled in a particular law school skills course felt significantly different about their level of preparedness than for non-minority students enrolled in that same law school skills course as depicted in the following hypothetical data:

Table 7: Hypothetical Data Of Mean Preparedness Ratings For Legal Writing For Law Students Enrolled in Moot Court

(1-7 SCALE)	
Male	4.20
Minority	3.22
Non-minority	5.17
Female	5.00
Minority	3.88
Non-minority	6.11

In the above hypothetical data, it would appear that females who were enrolled in Moot Court felt generally better prepared for legal writing than males who were enrolled in the same Moot Court program. Moreover, the above hypothetical data illustrates a racial divide among those students who were enrolled in the Moot Court course; minority women and men both had generally lower mean preparedness ratings than non-minority women and men. Such data would demand further research to determine whether the differences were due to distribution of general academic abilities in the groups being compared or really due to actual differences in perceptions. For instance, a statistical technique known as analysis of covariance (ANCOVA) could be used to determine whether the racial differences continue to exist when differences based on the distribution of academic skills in the groups are removed.³⁵

As it becomes abundantly clear in the above discussion, the analysis and interpretation of survey data will likely require law schools to rely on educational researchers for assistance. It is simply inescapable that most law schools will have to rely on outside expert help. Nevertheless, law schools can greatly re-

35. ANCOVA combines the procedure of ANOVA with regression analysis, which is a method for predicting one variable by one or more other variables. ANCOVA provides a method of more accurately determining the significance of differences between two groups by statistically equalizing the two groups on one or more variables. See GLASS & HOPKINS, *supra* note 32, at 593.

duce their need for experts in conducting survey research if there was a uniform survey they could use in assessing graduate attitudes and perceptions toward the importance of skills and preparedness. In the following section, methodological issues will be raised as well as some possible solutions. Additional areas of research will also be identified and proposed.

Part III: Methodological Issues³⁶

A. *Breadth of the Survey Population*

Surveying more recent classes of graduates will be more helpful to law schools seeking to evaluate their curricula than surveying classes of graduates going back more than five years. Graduates who are five or more years out of law school are less likely to have experienced relatively current versions of the law school's curricula that are being assessed by a law school. Moreover, relying on the memories of less recent graduates about their level of preparedness when they first began the practice of law is problematic. Nevertheless, a survey of graduates who have been five or more years out of law school would be helpful for other kinds of research objectives. For instance, asking less recent graduates and even more importantly, employers to rate the relevance and importance of MacCrate skills in the workplace would be helpful in updating and adding to the current list of MacCrate skills, as other commentators such as Gary A. Munneke have argued.³⁷ Obviously, the opinions of more experienced attorneys about the relevance or importance of legal skills should be given more weight than the opinions of an attorney with only a year or two of practice experience. The WMCLS survey provides an example of how a survey of less recent graduates can be helpful; the survey covered not only recent graduates but also less recent graduates and asked whether they felt prepared as practicing attorneys for any new demands of the legal workplace. However, a survey to update the MacCrate skills goes beyond the scope of this article.

36. The author wishes to acknowledge the assistance of the Statistical Consulting Seminar at the City University of New York Graduate Center led by Professor Juan Battle of the Sociology Department and Professor David Rindskopf of the Educational Psychology Department.

37. See Munneke, *supra* note 4.

B. *Validity Issues*

In order for law schools to trust the results from a survey and make decisions based in part on data generated from surveys, the survey instrument must be both valid (externally and internally) and internally reliable. The following subsections will identify major issues that must be resolved in constructing a uniform survey instrument that law schools across the country can use to assist them in assessing the impact of their curricula on the preparedness of their recent graduates.

1. *External Validity*

External validity relates to whether the results from a survey can be generalized from the sample of those who responded to the larger population from which the sample was drawn.³⁸ For instance, if the population being surveyed was the class of 1980 and only a portion of the entire class of 1980 responded, the external validity question would be whether those who responded are representative of their class.

Non-response bias is frequently a major problem in survey research because in most cases, it is very difficult to get everyone in the population to respond to a survey, and the accuracy of the survey results become suspect when particular subgroups of the survey population fail to respond.³⁹ Non-response bias is reflected in the percentage of responses to the WMCL and CUNY surveys. In the CUNY survey there was a 25% overall response rate to its survey while the WMCL 1997-98 survey enjoyed the overall response rate of 58.4 %, a high response rate, due to the multiple survey forms that were sent to individuals who did not initially send in their questionnaires. The substantial percentages of people not responding provides a strong reason to expect a systematic bias in the responses that were received and that makes the responses unrepresentative of the population. The biases may be gender-related as well as ethnic or racial. In the CUNY Law survey, the responses came predominantly from women graduates and predominantly Caucasian graduates; women constituted 68% of all the responses

38. KERLINGER & LEE, *supra* note 16, at 476. External validity is a test measurement issue that is also applicable to survey items. *Id.* at 607.

39. FLOYD J. FOWLER, JR., *SURVEY RESEARCH METHODS* 39-46 (2002).

and 67% percent of the responses were from graduates who identified themselves as Caucasian. As racial minorities constitute at least 50% of the total number of graduates surveyed, it is reasonable to conclude that ethnic minorities are under-represented in the responses received. The under-representation of ethnic minorities is unsurprising, as it has been shown that minorities typically are less likely than non-minorities to respond to surveys. Under-representation in survey responses is inevitable, but can be minimized with follow-up surveys and financial incentives.

Yet even with measures to boost the response rate, law schools should expect a substantial percentage of non-respondents in their surveys and the real possibility of bias in survey responses. One technique to ameliorate the possible bias is statistical adjustment.⁴⁰ Statistical adjustment involves re-weighting the under-represented group's representation to reflect their known percentage of the population. For instance, suppose African Americans constituted 15% of the graduate population at a law school and only 5% of the responding surveys were from African Americans. The responses of the African Americans would be increased in order to reflect their actual percentage in the population.⁴¹ In order to re-weight the responses, the responses of members of the under-represented segments of the population are multiplied by a factor, that is the inverse of their actual known representation in the existing population. The William Mitchell researchers applied this technique to re-weight the proportion of various under-represented strata of people in certain sized law firms. Of course, the assumption behind data weighting is that the responses from those who did respond are similar to the non-responders, which may not be a safe assumption.⁴² Thus, any data weighting should be accompanied with a statement concerning this assumption. Another technique to ameliorate bias is to survey the non-respondents by other means such as telephone or personal

40. Statistical adjustment is a common method for correction of actual data collected. See *Wisconsin v. City of New York*, 517 U.S. 1 (1996) (statistical adjustment not required to rectify undercounting of minority groups).

41. FOWLER, *supra* note 39, at 51-52.

42. *Id.* at 52.

interview.⁴³ This survey of non-respondents could assist in determining the direction of the non-response bias. Moreover, the survey results of non-respondents could be later added to the initial sample data set.⁴⁴

2. *Internal Validity*

The internal validity of a measure in a test or survey relates to whether the survey actually measures what it purports to measure.⁴⁵ The internal validity question here is whether the survey instrument is a true or accurate measure of people's attitudes or perceptions about their level of preparedness or the importance of skills in the workplace. Though it is never possible to really know directly the validity of a measure, it is possible to infer validity through other means. In this case, validity of the attitude measures may be a problem due to flaws in the construction of the questionnaire design, which may have induced a false consistency (reliability) in responses. This problem may have seriously affected the validity of the responses in both the CUNY and WMCL survey. An examination of the rating responses to the CUNY survey shows that the mean scores for importance and preparedness ratings were in the 3-4 range which is the middle of the 1-7 scale. These mean ratings may mean that responding law graduates were marking attitude ratings straight down the middle of the scale with little regard to their true attitudes—an error of central tendency.⁴⁶

The odd-number scale of the attitude rating likely induced this error. To reduce the incidence of the error, future surveys should use an even-numbered scale. Even-numbered scales make it harder for respondents to simply mark a rating down the middle since there is no obvious middle whole-number rating. Thus, a question asking respondents to rank the importance of a skill would be reworded as:

On a whole number scale from 1 to 8 in which 1 means "not at all important" and 8 means "very highly important," please circle the

43. *Id.*

44. *Id.*

45. ANNE ANASTASI & SUSANA URBINA, *PSYCHOLOGICAL TESTING* 113 (7th ed. 1997).

46. KERLINGER & LEE, *supra* note 16, at 739.

whole number rating that most closely describes your perception of the importance of the following skills to your work.

In the above example, a respondent who is inclined to mark down the middle will be forced to choose between a 4 and 5 rating. Moreover, the error of central tendency is less likely to occur if survey items are organized in smaller, related groupings of 3-5 items. The WMCL and CUNY surveys were organized in one large section of items consisting of 10 or more items.

One way to check the accuracy importance ratings is to look at each of the importance ratings and compare those ratings to the activities that the graduates are actually engaged in at their workplace. For instance, graduates who are engaged in transactional legal work should have relatively low importance ratings for legal skills more exclusively related to litigation and vice versa. However, this comparison is limited to those skills that are more clearly related to one type of practice rather than a skill that is needed in different types of law practices—such as client counseling and interviewing skills.

C. *Item Reliability*

Reliability refers to the consistency in a measure, and an unreliable measurement calls into question whether the people responding to the survey have a common understanding of what is being asked of them.⁴⁷ Too much ambiguity in the wording of a survey question will lead to low reliability while high reliability occurs when people who read a survey question have a common understanding of what is being asked. Low unreliability of a survey or test item leads to serious questions on the worth of the responses. Reliability is established by a statistical test known as Cronbach's alpha, and a low alpha coefficient can indicate that subjects do have inconsistent understandings of what is being asked.⁴⁸

The report of the WMCL survey omits any reference to the reliability coefficients of survey items, and it is unclear whether they performed an analysis of internal reliability of the survey.

47. ANASTASI & URBINA, *supra* note 45, at 84-85; KERLINGER & LEE, *supra* note 16, at 642-45. The principles of reliability of test items is also applicable to the reliability of survey items. *Id.* at 607.

48. MEREDITH D. GALL ET AL., *EDUCATIONAL RESEARCH: AN INTRODUCTION* 257 (6th ed. 1996); KERLINGER & LEE, *supra* note 16, at 652-57.

However, the CUNY pilot survey results were subjected to a reliability analysis. Instead of applying a statistical reliability analysis of all 23 skills, skills were grouped on the basis of commonalities among skills. For instance, one cluster was advocacy skills which included administrative advocacy, appellate advocacy, persuasive writing, pretrial/trial skills and oral argument. The results of this reliability analysis follows:

Clusters	Reliability Alpha Coefficient
Advocacy skills: <ul style="list-style-type: none"> • Administrative advocacy • Appellate advocacy • Persuasive writing • Pretrial/trial skills • Oral argument skills 	.7545
Knowledge of law: <ul style="list-style-type: none"> • Knowledge of procedural law • Knowledge of substantive law 	.7842
Legal analytical skills: <ul style="list-style-type: none"> • Critical thinking and legal analysis • Analytical writing 	.7748
Ability to research the law: <ul style="list-style-type: none"> • Theoretical perspectives • Traditional research skills • Computer research skills • Ability to learn unfamiliar areas of the law 	.7113
Negotiation skills: <ul style="list-style-type: none"> • Negotiation skills • Alternative dispute resolution 	.6931
Management skills: <ul style="list-style-type: none"> • Office management • Time management 	.8131
Clinical-related skills: <ul style="list-style-type: none"> • Interviewing/counseling skills • Problem solving for individuals/groups • Clinical judgment 	.7424

As a general guide, reliability coefficients in the .70 range are considered satisfactory, .80 range, good; and .90 and above excellent.⁴⁹ The moderate range of the reliability coefficients for each of the clusters could indicate at least one of the following:

- 1) The skills in a cluster are really not all that related and hence should be in some other constituted grouping of skills; or

49. DARREN GEORGE & PAUL MALLERY, *SPSS FOR WINDOWS STEP BY STEP: A SIMPLE GUIDE AND REFERENCE* 217 (3d ed. 2001).

- 2) That the moderate reliability could be due to the ambiguity of the wording of skills and that reduction of the ambiguity in the description of skills would increase the reliability of the measure.

If the skills were wrongly grouped, another procedure for grouping skills would entail using a procedure known as "factor analysis." As Kerlinger and Lee have noted: "Factor analysis serves the cause of scientific parsimony. It reduces the multiplicity of tests and measures to greater simplicity. It tell us. . . what tests or measures belong together—which ones virtually measure the same thing and how much they do so."⁵⁰

To eliminate the possibility that low reliability is due to ambiguous wording, survey designers should pre-test various versions of a survey with a small number of people from the target population to determine which wordings of legal skills is the least ambiguous.

Conclusion

A survey of graduates can provide a law school with valuable feedback on perceptions of the relevancy of MacCrate skills to legal workplace and perceptions of their level of preparedness for the legal practice. Moreover, a survey could also help to identify any significant gaps in the perceptions of students based on ethnicity/race, gender or both. However, a survey is only as good as the instrument and the procedure for carrying it out. A survey needs to be valid for the purpose of measuring attitudes, and a survey needs to be reliable. Moreover, the survey has to be administered under procedures that ensure validity and reliability. Further research is needed to construct a good survey and define procedures that could be uniformly applied by law schools across the country. The American Bar Association and National Association for Law Placement could be approached about funding, research or both to develop a uniform skills assessment instrument.

50. KERLINGER & LEE, *supra* note 16, at 826.